

ORDINANCE NO. 1660

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING CHAPTER 2.18 OF THE BONNEY LAKE MUNICIPAL CODE AND THE CORRESPONDING PORTIONS OF ORDINANCE NUMBERS 707, 792, 988, AND 1505 AND REPEALING SECTION 14.20.040 OF THE BONNEY LAKE MUNICIPAL CODE AND THE CORRESPONDING PORTION OF ORDINANCE 1505 RELATED TO THE HEARING EXAMINER CODE.

WHEREAS, the City implemented a hearing examiner system in 1995 to consider quasi-judicial land use actions, appeals of administrative land use decisions, and code enforcement matters as provided for in RCW 35A.63.170 and 58.17.330; and

WHEREAS, a public hearing with the Planning Commission is not required as the amendments contain in this ordinance are not considered development regulations as defined in BLMC 14.10.030 and RCW 36.70B.030(8); and

WHEREAS, Under the State Environmental Policy Act (SEPA) the adoption of this Ordinance is a non-project action as defined by WAC 197-11-704(2)(b); and

WHEREAS, the Public Service Director acting as the SEPA Responsible Official determined the amendments contained in this ordinance relate solely to governmental procedures, which are categorical exempt from review under the SEPA pursuant to WAC 197-11-800(19)(a); and

WHEREAS, the City is not required to provide a Notice of Intent to Adopt to the Department of Commerce as the amendments contain in this ordinance are not considered development regulations as defined in BLMC 14.10.030 and RCW 36.70B.030(8);;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2.18 of the Bonney Lake Municipal Code and the corresponding portions of Ordinance 707 §§ 1 through 9, 12, 18, 22, 22a, 24, 25, and 33, Ordinance 792 § 1 Ord. 988 § 5, Ord. 1505 § 8, are each hereby amended to read as follows:

2.18.010 Office created.

Pursuant to RCW ~~35A.63.170~~^{35A.63.170130}, and 58.17.330, and ~~WAC 51-04-030~~, the office of land use hearing examiner, hereinafter referred to as “examiner,” is created. The examiner shall interpret, review and implement land use regulations as provided in this

chapter or by other ordinances. Unless the context requires otherwise, the term “examiner,” as used in this chapter, shall include “examiner(s) pro tem.”

2.18.020 Appointment – Term.

The hearing examiner and hearing examiner pro tem shall be appointed by the mayor for an initial one-year term with the consent of the City Council. The examiners serve at the will of the mayor’s discretion. ~~The mayor may also appoint the examiner(s) pro tem to serve in the event of the examiner’s absence for terms specified in writing, but which shall not exceed the term of the appointing mayor.~~ Subsequent terms shall be for a period of four years.

2.18.030 Qualifications.

The examiner ~~and examiner pro tem~~ shall be appointed solely with regard to their qualifications for the duties of the office which shall include, a Juris Doctor degree and a license to practice Law in the State of Washington and a minimum of five (5) years of experience as a land use hearing examiner or as a land use attorney representing clients before administrative decision makers. ~~but not be limited to, persons with appropriate educational experience, such as an urban planner, or public administrator, with at least five years’ experience in planning work in a responsible capacity, and persons with legal experience in the area of land use management of administrative law.~~

2.18.040 Compensation.

The city may contract with the examiner and examiner pro tem for the performance of duties described in this chapter. ~~The total compensation to be paid the examiner and examiner pro tem shall not exceed that in the annual planning and community development department budget, or building department budget when appropriate.~~

2.18.050 Examiner(s) pro tem – Qualifications and duties.

The examiner pro tem shall be subject to the same qualifications as the hearing examiner, and shall have all the duties and powers of the hearing examiner.

2.18.060 Freedom from improper influence.

No person, including city or county officials, elective or appointive, shall attempt to influence an examiner in any matter pending before the examiner, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of the examiner’s duties in any other way; provided, that this section shall not prohibit the city attorney from rendering legal services to the examiner upon request.

2.18.070 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest, or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. No member of city council who has such an interest or has had such contacts shall participate in the consideration of an appeal from or a review of an examiner's decision.

2.18.080 Meetings – Frequency.

Meetings of the hearing examiner shall convene once a month, if necessary, or more frequently as need requires.

2.18.090 Powers of the hearing examiner.

A. The hearing examiner shall receive and examine all available information, conduct public hearings, prepare a record thereof, consider the applicable permit criteria, and enter decisions or recommendations for the following matters in accordance with the procedural chapters here cited:

1. Issue final decision on all Type 3A and 3B permits as defined in BLMC 14.30.010;
2. Conduct the public hearing for all Type 4 permits as defined in BLMC 14.30.010 and provide a recommendation to the city council, who then makes the final decision;
3. Hear appeals of actions of the director(s) in accordance with Chapter 14.120 BLMC; ~~and~~
4. Hear appeals of notices of ~~civil~~-violation and civil penalties in accordance with Chapter 14.130 BLMC; and
5. Issues determination regarding a dwelling, building, structure, or premise is unfit for human habitat has provided in BLMC 14.130.160.
6. Other quasi-judicial matters as may be assigned or delegated to the examiner by the city council or the municipal code.

B. The hearing examiner's decision on permit applications may be to grant or deny the application, or the examiner may require of the applicant such conditions, modifications and restrictions as the examiner finds necessary to make the application

compatible with its environment and carry out the objectives and goals of the comprehensive plan, the development code, and other codes and ordinances of the city of Bonney Lake and applicable state and federal laws.

- C. The hearing examiner shall have no role in legislative actions, including comprehensive plan amendments, municipal code amendments, and associated SEPA determinations, unless specifically delegated such authority by the city council.

2.18.120 Report of the ~~planning and community development~~ public services department.

The ~~planning and community development~~ public services department shall coordinate and assemble the reviews of other city or county departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the department's findings and recommendations. At least five working days prior to the scheduled hearing the report shall be filed with the examiner.

2.18.180 Appeal from examiner's decision.

- A. The decision of the examiner on a Type 3A and 3B permit applications and appeals of administrative decisions, notice of violations, and civil penalties shall be final. Appeal of a hearing examiner's decision shall be through the Land Use Petition Act (LUPA), Chapter 36.70C RCW.

- B. The hearing examiner's decision related to the fitness of buildings, structures, dwellings, and premises under BLMC 14.130.160 shall be final unless appealed to Bonney Lake City Council.

2.18.240 Examiner's report to ~~planning and community development~~ public services department

The examiner shall report in writing to and meet with the ~~planning and community development~~ public services department at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances. Such report shall include a summary of the examiner's decisions and costs since the last report. ~~The examiner may at any time, on the examiner's own motion, request advice and counsel of the planning and community development department regarding interpretation of land use policies and regulations.~~

2.18.250 Examiner’s ~~building division, public works~~ public services department coordination.

The examiner may at any time, on the examiner’s own motion, request advice and counsel of the ~~building division~~ public services department staff regarding interpretation of ~~building~~ City codes, policies, and regulations.

2.18.270 ~~Hearing examiner’s public hearing—Criteria for consideration~~ Rules

~~Repealed by Ord. 1505.~~

The examiner shall have the power to prescribe rules for the conduct of hearings and other procedural matters related to the duties of the office. Such rules may provide for cross-examination of witnesses

2.18.280 Public hearing – Record keeping.

All hearings shall be public. Records of the examiner shall be kept by the ~~planning staff~~ the City and shall be made available to the public upon request. The ~~planning and community development department will provide a recording secretary or~~ City shall record the hearings and the examiner shall provide the clerk to facilitate the hearing. ~~will subcontract secretary’s duties to the office of the hearing examiner.~~

2.18.360 Resubmittal of application Continuances.

Once legal notice has been given, no matter shall be postponed over the objection of any interested party, except for good cause shown. Continuances may be granted at the discretion of the examiner; provided, the interested parties in attendance shall be given an opportunity to testify prior to the continuance. The applicant shall pay the actual cost for any hearing postponed or continued by request of the applicants after legal notice has been given; provided, that an applicant is not required to pay the continuance fee if the continuance is warranted by new information presented by the city or third parties not including the applicant or other proponents of the application

~~Repealed by Ord. 1505.~~

Section 2. Repealer. The previously codified provisions of Section 14.20.040 of the Bonney Lake Municipal Code entitled “Hearing Examiner” and the corresponding portions of Ordinance No. 1505 § 2 are each hereby repealed.

Section 3. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as required by law.

PASSED BY THE CITY COUNCIL this 26th day of October, 2021

DocuSigned by:
Neil Johnson, Jr. _____
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NEIL JOHNSON, JR., Mayor

AUTHENTICATED:

DocuSigned by:
Sadie A. Schaneman _____
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Sadie A. Schaneman, CMC, Interim City Clerk

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Public Services Department Jason Sullivan – Planning & Building Supervisor	Meeting/Workshop Date: October 26, 2021	Agenda Bill Number: AB21-147
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D21-147	Sponsor:

Agenda Subject: Hearing Examiner Code Amendments

Full Title/Motion: An Ordinance of the City Council of the City of Bonney Lake, Pierce County, Washington, amending chapter 2.18 of the Bonney Lake Municipal Code and the corresponding portions of ordinance numbers 707, 792, 988, and 1505 and repealing section 14.20.040 of the Bonney Lake Municipal Code and the corresponding portion of ordinance 1505 related to hearing examiner code.

Administrative Recommendation: Approve

Background Summary: The City implemented a hearing examiner system in 1995 to consider quasi-judicial land use actions, appeals of administrative land use decisions, and code enforcement matters as provided for in RCW 35A.63.170 and 58.17.330. The City has had the same Hearing Examiner since 1999 and he has decided to retire at the end of the year. The City does not currently have a Hearing Examiner Pro-Tem. Prior to issuing an RFP for a new Hearing Examiner and Hearing Examiner Pro-Tem, staff wanted to update the hearing examiner code so that it clearly outlines all the duties and requirements for these positions. The goal is to have the code update by the end of October and have an RFP for these services issued in November.

Attachments: Ordinance D21-147

BUDGET INFORMATION			
Budget Amount	Current Balance	Required Expenditure	Budget Balance
Budget Explanation:			

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	CDC	<i>Approvals:</i>	Yes No
	Date: October 19, 2021	Chair/Councilmember Dan Swatman	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Kelly McClimans	<input checked="" type="checkbox"/> <input type="checkbox"/>
		Councilmember Tom Watson	<input checked="" type="checkbox"/> <input type="checkbox"/>
	Forward to: October 26, 2021	Consent Agenda:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone, P.E.</i>	Mayor: <i>Neil Johnson Jr.</i>	Date Reviewed by City Attorney: (if applicable):